THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION No.25962 of 2000

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Date: 08.08.2007

Between:

Koduri Narsimha Goud

..... PETITIONER

AND

1. The Commissioner, Prohibition and Excise,
   Nampally, Hyderabad and two others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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ORDER:

The petitioner is the owner of Ambassador Car bearing No.AEG 369, which was seized on the allegation that 153 qts of IML Bottles were found in it while illegally being transported by the accused, P.Venkataiah and P.Purushotham. The said accused were arrested in Crime No.242/96-97, dated 10.04.1997 for the offence punishable under Section 34(a) of the Andhra Pradesh Excise Act, 1968 (for short 'the Excise Act') / Section 8(a) of A.P. Prohibition Act, 1995. The accused alleged to have stated that they were bringing the said liquor from Bidar. After taking sample bottles, the remaining bottles and the vehicle were seized and a show cause notice was issued to the petitioner on 28.07.1997 calling upon him to show cause as to why the said Ambassador Car should not be confiscated under Section 12 of the A.P. Prohibition Act, 1995 and Sections 45 and 46 of the Excise Act as amended in Act No.20 of 1994, dated 20.05.1994. The petitioner submitted his explanation to the said show cause notice stating that he had given the said car to his brother, who at the request of his friends, went to their house at Choutappal, where the Excise Officials raided and seized the car and that the gunny bags which were seized were not loaded in the car and therefore, the vehicle was not involved in the commission of the offence.

The Deputy Commissioner of Prohibition and Excise, Hyderabad, the second respondent herein by the impugned proceedings in Cr.No.B2/2316/97, dated 08.02.2000, ordered confiscation of the vehicle stating that the accused driver was in front of the wheel; that two persons were standing behind with three gunny bags; that the dickey of the car was open and two persons standing behind were about to load the

gunny bags in the car; and that on search of the gunny bags, 153 bottles of IML were found. In view of the same, the vehicle was confiscated in terms of the provisions of the A.P. Prohibition Act, 1995.

Aggrieved by the said order, the petitioner filed an appeal before the Commissioner of Prohibition & Excise on 18.11.2000 with an application to condone the delay in filing the appeal. The learned Commissioner of Prohibition & Excise, Hyderabad, the first respondent herein, has not entertained the appeal, since it was filed beyond the period of limitation prescribed under Section 46-C of the Excise Act, where the appeal has to be preferred within 60 days from the date of passing the order. Questioning the correctness of the dismissal of the appeal and the order of confiscation passed by the second respondent, dated 08.02.2000, the petitioner filed this writ petition stating that when his brother, who was driving the car, was enquiring about the luggage, the Excise Officials came to the spot and seized the property and the car; that the luggage was never put into the car; and that the vehicle was never used for commission of the offence. Therefore, the confiscation order as such passed is illegal and the same is liable to be set aside.

The Deputy Commissioner of Prohibition & Excise, Nampally, the second respondent, filed a counter-affidavit reiterating the averments made in the confiscation order stating that the two persons, who were arrested, stated before the mediators that they have engaged the car for transporting the said gunny bags containing IML and the same was confirmed by the driver also as seen from the contents of the panchanama. It is also stated that the second respondent passed an order ordering release of the vehicle on furnishing a bank guarantee for Rs.10,000/- pending finalisation of confiscation proceedings, dated 16.05.1997 on request of the petitioner. It is further stated that after

issuing necessary show cause notices and after considering the explanation of the petitioner, the confiscation order has been passed.

This Court in Writ Appeal No.2569 of 2005 held that the provisions of Section 29(2) of the Limitation Act cannot be invoked for extending the period of limitation prescribed under Section 46-C of the Excise Act, since the two conditions specified in Section 29(2) of the Limitation Act namely 1) that there is a provision for limitation under a special or local law in connection with any suit, appeal or application and (2) that the period prescribed under special law is special than the one prescribed by the Schedule appended to the Limitation Act, have not been satisfied and that there is no provision in the Schedule of the Limitation Act for filing appeal against an order of confiscation of the vehicles used for committing an offence under the Act. As a corollary, the appeal filed after the period of limitation i.e., 60 days cannot be entertained by the Deputy Commissioner by condoning the delay invoking Section 29-C of the Limitation Act.

Coming to the confiscation order, whether the same is sustainable or not is a question, which remains to be answered.

Section 34 of the Excise Act prescribes penalties for illegal import of the liquor etc. Whoever in contravention of this Act or of any rule, notification or order made, issued or passed thereunder or of any licence or permit granted or issued under this Act, imports, exports, transports, manufactures, collects or possesses or sells any intoxicant shall on conviction be punished with imprisonment for a term which shall not be less than six months, which may extend up to three years and the fine which shall not be less than Rs.5,000/- to Rs.20,000/-.

Section 45 of the Act authorizes the liability of certain things to confiscation, which reads as under:

> "Whenever any offence has been committed, which is punishable under this Act, following things shall be liable to confiscation namely:
> (1) any intoxicant, materials, still, utensil, implements or apparatus in respect of or by means of which such offence has been committed;
>
> (2) any intoxicant lawfully imported, transported, or manufactured, had in possession, sold or bought along with, or in addition to, any intoxicant liable to confiscation under clause (1); and
> (3) any receptacle, package, or covering in which anything liable to confiscation under clause (1) or clause (2) is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel, raft or other conveyance used for carrying the same;"

It is well settled that when any person is liable for punishment under special enactment, the provisions have to be interpreted strictly. When Section 45(3) of the Excise Act itself shows that any animal, vehicle, vessel, raft or other conveyance used for carrying the same can be confiscated, but this Section does not contemplate confiscation of a vehicle, which is likely to be used.

Section 12 of the of the A.P. Prohibition Act, 1995, which provides for the things which are liable to be confiscated**,** reads as under:

> "Without prejudice to the powers of the Excise Officers under Section 46 of the Andhra Pradesh Excise Act, 1968. In any case in which an offence has been committed against this Act, the liquor by means of which the offence has been committed shall be liable to confiscation along with receptacles, packages, coverings, animals, vessels, carts or other vehicles used to hold or carry the same."

This Section also does not say that a vehicle, which is likely to be

used for commission of the offence under this Act, shall be confiscated.

Section 45 of the Excise Act and Section 12 of the Andhra Pradesh Prohibition Act, 1995 contemplate that the vehicle which is confiscated should be used for committing the offence. In the present case, the vehicle was about to be used for transporting the liquor.

In these circumstances, the confiscation order passed by the second respondent confiscating the vehicle cannot be sustainable and the same is accordingly set aside.

The writ petition is accordingly allowed. There shall be no order as to costs.

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A. GOPAL REDDY, J

8th August, 2007
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